

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CenterPoint Energy, Inc.)	File No.: EB-FIELDSCR-12-00003788
)	NAL/Acct. No.: 201332540001
Owner of Antenna Structure Number 1281666)	FRN: 0001687920
Katy, Texas)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 6, 2013

Released: May 6, 2013

By the Resident Agent, Houston Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that CenterPoint Energy, Inc. (CenterPoint), owner of antenna structure number 1281666, in Katy, Texas (Antenna Structure), apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act), and Sections 17.48(a) and 17.51(a) of the Commission's rules (Rules),¹ by failing to exhibit required red obstruction lighting on the Antenna Structure and notify immediately the Federal Aviation Administration (FAA) of the light outage. We conclude that CenterPoint is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. The Antenna Structure is 105.2 meters in height above ground and is required to have a dual lighting system displaying red obstruction lighting at night and medium intensity white obstruction lighting during the day.² On August 20 and 22, 2012, in response to a complaint of a light outage, an agent from the Enforcement Bureau's Houston Office (Houston Office) observed that the Antenna Structure was unlit after sunset.³ Later in the evening of August 20, 2012, the agent from the Houston Office contacted the FAA and learned that no Notice to Airmen (NOTAM) had been issued for the Antenna Structure.⁴

3. On September 10, 2012, the Houston Office issued CenterPoint a Notice of Violation (NOV) for failing to exhibit red obstruction lighting from sunset to sunrise and notify the FAA of the light outage.⁵ On November 8, 2012, CenterPoint submitted a response to the NOV⁶ stating that it completed the

¹ 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.48(a), 17.51(a).

² See Antenna Structure Registration database for antenna structure number 1281666. See also 47 C.F.R. § 17.21 (requiring antenna structures more than 60.96 meters in height to be painted and lighted).

³ Local sunset on August 20 and 22, 2012 was approximately 8:00 P.M. local time.

⁴ See 47 C.F.R. § 17.48 (requiring tower owners to notify the FAA immediately of any known outages of tower lighting lasting more than 30 minutes). The agent informed the FAA of the light outage and the FAA issued a NOTAM for the Antenna Structure on August 20, 2012.

⁵ CenterPoint Energy, Inc., Notice of Violation, V201232540017 (Sept. 10, 2012) (on file in EB-FIELDSCR-12-00003788).

repairs to the lights on the Antenna Structure and the structure's remote alarm monitoring system on September 28, 2012.⁷ However, CenterPoint also stated that it did not notify the FAA of the light outage until October 5, 2012.⁸

III. DISCUSSION

4. Section 503(b) of the Act, provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁹ Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁰ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹³ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹⁴

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⁶ On October 5, 2012, CenterPoint received a verbal extension in which to file a response to the NOV, however, by that time the response was already past due. We remind CenterPoint of the importance of submitting responses to Commission communications in a timely fashion and note that any future failure to do so could result in a separate enforcement action, including monetary forfeitures.

⁷ See Letter from Theoplis A. Woodard, Manager, Telecom Planning & Engineering Design, CenterPoint Energy, Inc., to Lee Browning, Resident Agent, Houston Office (Nov. 8, 2012) (on file in EB-FIELDSCR-12-00003788) (*NOV Response*). CenterPoint stated that it last inspected its remote alarm monitoring system on June 15, 2012. See Email from Ghengis C. Mitchell, Telecommunications Planning & Engineering Design, CenterPoint Energy, Inc., to Lee Browning, Resident Agent, Houston Office (Jan. 21, 2013, 6:29 P.M. C.S.T.) (on file in EB-FIELDSCR-12-00003788). We remind CenterPoint that it is required to inspect its remote alarm monitoring system every three months to ensure the system's proper functioning. See 47 C.F.R. § 17.47(b).

⁸ See Email from Ghengis C. Mitchell, Telecommunications Planning & Engineering Design, CenterPoint Energy, Inc., to Lee Browning, Resident Agent, Houston Office (Nov. 15, 2012, 1:18 P.M. C.S.T.) (on file in EB-FIELDSCR-12-00003788). CenterPoint explained that it submitted its *NOV Response* in November, because its FCC license specialist was out of the office due to injury from September 14 until October 4, 2012.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms").

¹² See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹³ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

¹⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are

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A. Failure to Exhibit Required Red Obstruction Lighting on the Antenna Structure and Notify the FAA of the Light Outage

5. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.¹⁵ Section 17.51(a) of the Rules states that “[a]ll red obstruction lighting shall be exhibited from sunset until sunrise unless otherwise specified.”¹⁶ Section 17.48(a) of the Rules states that owners of antenna structures “shall report immediately by telephone or telegraph to the nearest Flight Service Station or office of the Federal Aviation Administration any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes”¹⁷

6. The evidence in this case is sufficient to establish that CenterPoint violated Section 303(q) of the Act and Sections 17.48(a) and 17.51(a) of the Rules. The Antenna Structure is required to display red obstruction lighting at night.¹⁸ On August 20 and 22, 2012, an agent from the Houston Office inspected the Antenna Structure and observed that the red obstruction lighting was extinguished after sunset. CenterPoint became aware of the light outage on or before September 28, 2012, the date the lighting was repaired, but did not notify the FAA of the outage until October 5, 2012. Based on the evidence before us, we find that CenterPoint apparently willfully and repeatedly violated Section 303(q) of the Act and Sections 17.48(a) and 17.51(a) of the Rules by failing to exhibit required red obstruction lighting after sunset and notify the FAA immediately of a known light outage.

B. Proposed Forfeiture

7. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to comply with prescribed lighting is \$10,000.¹⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²⁰ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that CenterPoint is apparently liable for a total forfeiture in the amount of \$10,000.

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assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹⁵ 47 U.S.C. § 303(q).

¹⁶ 47 C.F.R. § 17.51(a).

¹⁷ 47 C.F.R. § 17.48(a).

¹⁸ See *supra* note 2.

¹⁹ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²⁰ 47 U.S.C. § 503(b)(2)(E).

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, CenterPoint Energy, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 303(q) of the Act and Sections 17.48(a) and 17.51(a) of the Commission's rules.²¹

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, CenterPoint Energy, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. CenterPoint Energy, Inc. shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²² When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

11. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²³ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

²¹ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.48(a), 17.51(a).

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²³ See 47 C.F.R. § 1.1914.

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²⁴ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road #362, Houston, Texas 77065 and include the NAL/Acct. No. referenced in the caption. CenterPoint Energy, Inc. also shall e-mail the written response to SCR-Response@fcc.gov.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to CenterPoint Energy, Inc. at 1111 Louisiana Street, Suite 1673B, Houston, Texas 77002.

FEDERAL COMMUNICATIONS COMMISSION

Lee R. Browning
Resident Agent
Houston Office
South Central Region
Enforcement Bureau

²⁴ 47 C.F.R. §§ 1.16, 1.80(f)(3).